

No. 16171

United States
Court of Appeals
for the Ninth Circuit

CHEW WING LUK, Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

DEC 11 1958

PAUL P. O'BRIEN, CLERK

No. 16171

United States
Court of Appeals
for the Ninth Circuit

CHEW WING LUK, Appellant,
vs.
JOHN FOSTER DULLES, as Secretary of State,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Complaint	11
Answer to Amended Complaint.....	14
Answer to Complaint.....	7
Appeal:	
Certificate of Clerk to Transcript of Record on	25
Designation of Record on (Appellant's-DC)	23
Designation of Record on (Appellee's-USCA)	77
Notice of	23
Statement of Points on (Appellant's-USCA)	75
Stipulation That Exhibits Be Considered in Original Form on (USCA)	78
Certificate of Clerk to Transcript of Record...	25
Complaint	3
Complaint, Amended	11
Designation of Record on Appeal (Appellant's-DC)	23
Designation of Record To Be Printed (Appellee's-USCA)	77

Findings of Fact, Conclusions of Law and Judgment	18
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	23
Statement of Points on Appeal (Appellant's-USCA)	75
Stipulation That Exhibits Be Considered in Original Form (USCA).....	78
Transcript of Proceedings and Testimony.....	26
Witnesses:	
Chew Fong Shew	
—direct	65
—cross	68
Chew Wing Luk	
—direct	33
—cross	43
—redirect	57
—recross	62

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

SIDNEY M. KAPLAN,
SIDNEY BROFFMAN,
756 So. Broadway,
Los Angeles 14, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,
HENRY P. JOHNSON,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California. [1]*

* Page numbers appearing at bottom of page of Original Transcript of Record.

In the District Court of the United States, North-
ern District of California, Southern Division

No. 30662

CHEW WING LUK, by his next friend, CHEW
FONG SHEW, Plaintiff,
vs.

DEAN ACHESON, as Secretary of State,
Defendant.

COMPLAINT FOR DECLARATORY JUDG-
MENT OF CITIZENSHIP UNDER 8 U.S.C.
903

Plaintiff, by his next friend Chew Fong Shew,
and his attorneys, Chow and Sing, complains of the
defendant as follows:

I.

That plaintiff is temporarily located in Hong
Kong, British Crown Colony, but avers that it is
his desire and intention to come to the United
States to take up residence with his aunt and next
friend, Chew Fong Shew, in San Francisco, Cali-
fornia.

II.

That the defendant, Dean Acheson, is the duly
appointed and qualified Secretary of State of the
United States and the head of the Department of
State; that the American Consul General and the
Foreign Service at Hong Kong, B.C.C., are under
his direction and control and are responsible solely
to him, the defendant, [2] as Secretary of State.

III.

That the jurisdiction of this Court is invoked because plaintiff has a cause of action against the defendant pursuant to the provisions of Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 U.S.C.A. 903); under the jurisdiction of this court in proceedings in equity; and under 28 U.S.C.A. 1331 and 2201;

IV.

That said plaintiff is the lawful blood son of Chew Tai Kam, a native born citizen of the United States whose citizenship status was conceded by the United States Immigration Authorities for the Port of San Francisco incident to his return from China in 1920; that as evidence of his citizenship, there was issued to Chew Tai Kam by the United States Immigration Authorities for the Port of San Francisco a Certificate of Identity; that the said Chew Tai Kam is now deceased, having died in Merced, California on Aug. 8, 1931.

V.

That said Chew Tai Kam made the following visit to China, to wit: departed 1906, returning 1920;

VI.

That said Chew Tai Kam was married to Wong Shee in 1917 (Chinese Republic 6) at the Nom Sing Lay Village, Hoy Ping District, Kwangtung Province, China; that plaintiff was born to the said Chew Tai Kam and Wong Shee on April 12, 1921 at the Nom Sing Lay Village, Hoy Ping District,

Kwangtung Province, China; that the facts of said marriage and of said birth were duly reported to the United States Immigration Service.

VII.

That Chew Fong Shew is a permanent resident of the City and County of San Francisco, State of California, and is within the jurisdiction of this Court.

VIII.

That Chew Tai Kam was a citizen at the time of the birth of the plaintiff and had resided in the United States prior to the birth of the plaintiff; that Wong Shee, plaintiff's mother, was an alien and is now deceased, having died in [3] China on May 4, 1946; that plaintiff was a citizen of the United States at birth by reason of the laws of the United States then in full force and effect, to wit: Section 1993 of the United States Revised Statutes, as amended by the Act of May 24, 1934, (46 Stat. 797) as further amended by Section 201(g) of the Nationality Act of 1940. (8 U.S.C.A. 601(g).)

IX.

That Chew Fong Shew, in or about December 1947, prepared and executed an affidavit attesting to the fact that plaintiff is her lawful blood nephew and an American citizen for the purpose of facilitating plaintiff's travel to the United States; that said affidavit was thereupon submitted and filed with the American Consulate General at Hong Kong, in support of plaintiff's application for issuance of an American passport or travel document

to enable plaintiff to come to the United States to commence his residence therein; that said travel documentation is indispensably required by all transportation companies operating between China, Hong Kong, and the United States as a necessary prerequisite to the granting of transportation to plaintiff and such documentation is required by the provision of the Act of May 2, 1918, as amended (22 U.S.C.A. 223-226) and the Regulations of the Department of State (22 C.F.R. 58) making provision for criminal prosecution and the imposition of criminal penalties for entering or attempting to enter the United States without such documentation.

X.

That plaintiff has been advised by the American Consul at Hong Kong, B.C.C., that his application for American passport is disapproved and that a travel document will not be issued to the plaintiff.

XI.

That the refusal of the American Consul at Hong Kong, an official of the United States responsible solely to the defendant herein, to issue to plaintiff an American passport or other travel document to enable plaintiff to proceed to the United States to reside therein is an arbitrary and unreasonable refusal or denial of a right or privilege of a citizen of the United States; that plaintiff [4] has exhausted all administrative remedies in his endeavor to obtain travel documentation to proceed to the United States.

XII.

Wherefore, plaintiff prays for a judgment and decree:

- 1) Directing and enjoining the defendant to issue to the plaintiff a Certificate of Identity, as provided in Section 503 of the Nationality Act of 1940 (8 U.S.C.A. 903), to enable the plaintiff to obtain transportation to the United States and appear in person to prosecute this action.
- 2) Declaring that the plaintiff is now, and has been since birth, a citizen and national of the United States.
- 3) And for such other and further relief as to the Court may deem meet and proper.

CHOW AND SING,

Per W. J. CHOW,

Attorneys for Plaintiff. [5]

Duly Verified.

[Endorsed]: Filed June 28, 1951.

[Title of District Court and Cause.]

ANSWER

Comes now Dean Acheson, Secretary of State of the United States, defendant in the above-entitled action, by and through his attorneys, Chauncey Tramutolo, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Answering Paragraph I of the complaint, defendant affirmatively asserts that plaintiff is not the blood son of Chew Fong Shew. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph I of the Complaint and therefore denies the same.

II.

Answering Paragraph II of the complaint, defendant admits the allegations contained in Paragraph II of the complaint. [7]

III.

Answering Paragraph III of the complaint, defendant affirmatively asserts that the plaintiff does not have a valid cause of action pursuant to the provisions of Section 503 of the Nationality Act of 1940 or under 28 U.S.C.A. 1331, or 2201. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph III of the complaint and therefore denies the same.

IV.

Answering Paragraph IV of the complaint, defendant affirmatively asserts that the plaintiff is not the true and lawful blood son of Chew Fong Shew. As the defendant is not now in possession of the immigration records, defendant has no knowledge, information or belief as to the other allegations contained in Paragraph IV of the complaint and therefore denies the same.

V.

Answering Paragraph V of the complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph V of the complaint and therefore denies the same.

VI.

Answering Paragraph VI of the complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph VI of the complaint and therefore denies the same.

VII.

Answering Paragraph VII of the complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph VII of the complaint and therefore denies the same. [8]

VIII.

Answering Paragraph VIII of the complaint, defendant affirmatively asserts that the plaintiff has not derived United States citizenship or nationality under the provisions of Section 1993 of the United States Revised Statutes as amended, or under any other statute. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph VIII of the complaint and therefore denies the same.

IX.

Answering Paragraph IX of the complaint, defendant admits that transportation companies operating between China and the United States require

a plaintiff to present documents issued by the American Consulate General before he would be accepted as a passenger. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph IX of the complaint, and therefore denies the same.

X.

Answering Paragraph X of the complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph X of the complaint and therefore denies the same.

XI.

Answering Paragraph XI of the complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph XI of the complaint and therefore denies the same.

Wherefore, defendant prays each and every relief sought by the plaintiff be denied; that this Court declare a judgment in favor of defendant that plaintiff has never been a citizen or national of the United States; and that defendant receive his [9] proper costs against the plaintiff in this action.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney,

/s/ EDGAR R. BONSALL,
Asst. United States Attorney,
Attorneys for Defendant. [10]

[Endorsed]: Filed August 16, 1951.

In the United States District Court, Southern
District of California, Central Division

Civil No. 204-57 HW

CHEW WING LUK, Plaintiff,
vs.

JOHN FOSTER DULLES, as Secretary of State,
Defendant.

**AMENDED COMPLAINT FOR DECLAR-
ATORY JUDGMENT**

Plaintiff amends the complaint herein as follows:

I.

This Court has jurisdiction pursuant to the provisions of Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 U.S.C. 903).

II.

Plaintiff resides in the County of Los Angeles, State of California, and is within the jurisdiction of this Court.

III.

Plaintiff's mother is Chew Fong Shew, a native born citizen of the United States, having been born in the city of San Francisco, state of California, on or about April 5, 1903.

IV.

That about the year 1906 or 1907, plaintiff's mother departed for China, returning to the United

States as a citizen of the United States on the SS President McKinley on April 2, [11] 1937, at Seattle, Washington, in possession of a Certificate of Identity No. 74983; she was admitted to the United States as a citizen thereof at that time.

V.

That while plaintiff's mother was in China, plaintiff was born out of wedlock, on or about July 10, 1921, at Nom Sing Village, Hoy Ping, Kwantung Province, China.

VI.

Plaintiff's father is unknown and plaintiff's birth has never been legitimated.

VII.

Plaintiff is a citizen of the United States under section 205 of the Nationality Act of 1940 (8 U.S.C. 605), which became effective on January 13, 1941.

VIII.

That on or about February 2, 1951, plaintiff claimed a right or privilege as a national of the United States in that he applied to the United States Consul for a United States passport to enable him to enter the United States as a citizen thereof; that on or about February 19, 1951, the Consul denied the right or privilege of a national of the United States to plaintiff by denying said application and refusing to issue said passport to plaintiff, thus preventing plaintiff from entering the United States as a citizen thereof.

IX.

That on or about November 6, 1951, a Certificate of Identity was issued to plaintiff by the American Consul for the sole purpose of enabling plaintiff to enter the United States temporarily so that he could prosecute this action for a judicial declaration of his nationality.

X.

That the defendant is the duly appointed and qualified [12] Secretary of State of the United States and the head of the Department of State; that the American Consul in Hong Kong is under his direction and control and responsible solely to him, the defendant, as Secretary of State.

Wherefore, plaintiff prays for a judgment and decree that he be declared a citizen of the United States, and for such other and further relief as to the Court seems proper.

Dated: October 11, 1957.

SIDNEY M. KAPLAN &
SIDNEY BROFFMAN,

/s/ By SIDNEY BROFFMAN,
Attorneys for Plaintiff. [13]

Duly Verified.

[Endorsed]: Filed October 21, 1957.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT

Comes now John Foster Dulles, Secretary of State of the United States, defendant in the above-entitled action, by and through his attorneys, Laughlin E. Waters, United States Attorney, Richard A. Lavine and Norman R. Atkins, Assistant United States Attorneys, and in answer to plaintiff's Amended Complaint, admits, denies and alleges as follows:

I.

Answering paragraph I of the Amended Complaint, defendant denies the same, paragraph I being a conclusion of law.

II.

Answering paragraph II of plaintiff's Amended Complaint, defendant admits the same.

III.

Answering paragraph III of plaintiff's Amended Complaint, defendant denies that plaintiff's mother is Chew Fong Shew. As [15] to any and all other allegations contained in paragraph III of plaintiff's Complaint, defendant has no knowledge, information or belief and on that ground denies the same.

IV.

Answering paragraph IV of plaintiff's Amended Complaint, defendant has no knowledge, information or belief as to the allegations contained therein and on that ground denies the same.

V.

Answering paragraph V of plaintiff's Amended Complaint, defendant denies the allegations contained therein.

VI.

Answering paragraph VI of plaintiff's Amended Complaint, defendant has no knowledge, information or belief as to the allegations contained therein and on that ground denies the same.

VII.

Answering paragraph VII of plaintiff's Amended Complaint, defendant alleges that the allegations contained therein are conclusions of law and on that ground denies the same.

VIII.

Answering the allegations contained in paragraph VIII of plaintiff's Amended Complaint, defendant denies the same because the allegation contained in line 20 that "the Consul denied the right or privilege of a national of the United States to plaintiff" is a conclusion of law.

IX.

Answering paragraph IX of plaintiff's Amended Complaint, defendant admits the allegations contained therein.

X.

Answering paragraph X of plaintiff's Amended Complaint, defendant admits the allegations contained therein. [16]

For a Separate, Distinct and Affirmative Defense,
Defendant Alleges:

I.

That this Court does not have jurisdiction in this case and that plaintiff has not stated a claim upon which relief can be granted because Section 503 of the Nationality Act of 1940 [54 Stat. 1171, 1172, 8 U.S.C. 903] on which plaintiff relies for jurisdiction was repealed, effective December 24, 1952; that plaintiff's Amended Complaint will not and cannot "relate back" [Rule 15(e) of the Federal Rules of Civil Procedure] to the time of filing the original complaint because the Amended Complaint alleges facts which did not arise out of the same transaction as the facts pleaded in the original complaint; that therefore this action upon the Amended Complaint is barred.

For a Second, Separate, Distinct and Affirmative Defense, Defendant Alleges:

I.

That this Court does not have jurisdiction and plaintiff does not state a claim upon which relief can be granted because plaintiff was never denied a right as a national of the United States, which denial is a jurisdictional prerequisite under Section 503 of the Nationality Act of 1940 [8 U.S.C.A. 903]. No official of the United States Government has ever denied that plaintiff was the son of Chew Fong Shew, as is alleged in the Amended Complaint, therefore there has been no denial of a right to plaintiff based on his allegation that he is the son of Chew Fong Shew.

For a Third, Separate, Distinct and Affirmative Defense, Defendant Alleges:

I.

That the filing of the amended, verified complaint constitutes [17] a fraud upon this Court because of the obviously inconsistent facts pleaded; that the very filing of the amended complaint is an affront to and imposition upon the dignity of this Court as well as being affirmative evidence of an admission by the plaintiff.

Wherefore, defendant prays each and every relief sought by the plaintiff be denied; that this Court declare a judgment in favor of defendant that plaintiff has never been a citizen or national of the United States; and that defendant receive his proper costs against the plaintiff in this action.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

NORMAN R. ATKINS,
Assistant U. S. Attorney,

/s/ NORMAN R. ATKINS,
Attorneys for Defendant. [18]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed October 28, 1957.

United States District Court, Southern District
of California, Central Division

Civil No. 204-57-HW

CHEW WING LUK,

Plaintiff,

v.

JOHN FOSTER DULLES, as Secretary of State,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

The above-entitled matter having come on for trial on the limited issue of jurisdiction on February 21, 1958, before the Honorable Harry C. Westover, Judge presiding without a jury; the plaintiff being represented by his attorney, Sidney Broffman, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, Richard A. Lavine and Norman R. Atkins, Assistant United States Attorneys, by Norman R. Atkins; and counsel for the parties having stipulated that a certified record of passport proceedings relating to the plaintiff should be received in evidence, and the Court having heard and received other testimonial and documentary evidence, and having heard arguments of counsel, and being fully advised in the premises, now makes the following Findings of Fact, Conclusions of Law, and Judgment: [20]

Findings of Fact

I.

On February 2, 1951, plaintiff executed an application for an American passport at Hong Kong before the American Consular officials.

II.

In said application plaintiff listed his father as being one Chew Tai Kam, also known as Sui Fa, who was born in San Francisco, California; plaintiff listed his mother as being one Wong Shee; and plaintiff stated that he, the plaintiff, was born at Nom Sing Lay Village, Hoy Ping District, Kwantung Province, China.

III.

In an affidavit attached to said application and executed the same date (February 2, 1951), plaintiff stated he had an aunt in the United States whose name was Chew Fong Shew.

IV.

On February 21, 1951, the said application for passport was disapproved. The reasons given for disapproval were: " * * * In view of the above discrepancies and the faked photograph, it is the opinion of the undersigned that the claim of applicant as the son of Chew Tai Kam is fraudulent. Applicant's affidavit was executed by his father's sister, who has a son living in China who is apparently not presently applying for documentation as an American citizen. The passport application has been disapproved, and the Consulate General has de-

clined to afford applicant facilities for execution of an affidavit enabling him to travel to the United States."

V.

On June 28, 1951, plaintiff filed a complaint for declaratory judgment of citizenship by his next friend, Chew Fong Shew; [21] the jurisdictional basis was set forth as Section 503 of the Nationality Act of 1940 [8 U.S.C. 903]; the verified complaint alleged that Chew Fong Shew was plaintiff's aunt, that plaintiff's father was one Chew Tai Kam who was born in the United States and was an American Citizen, and that plaintiff's mother was one Wong Shee.

VI.

On November 6, 1951, a certificate of identity was issued for the sole purpose of enabling plaintiff to enter the United States to judicially prosecute plaintiff's claim for citizenship.

VII.

On or about July 11, 1957, plaintiff moved to amend the complaint; and on October 21, 1957, the motion to amend the complaint was granted.

VIII.

The amended complaint alleged that plaintiff was the illegitimate son of Chew Fong Shew, who is alleged to be a citizen of the United States by birth in San Francisco; that plaintiff's father is unknown; plaintiff no longer claims citizenship as the son of Chew Tai Kam, but instead alleges he is the son

of Chew Fong Shew, whom plaintiff alleged on the original complaint to be his aunt.

IX.

Plaintiff alleged in said amended complaint that he, the plaintiff, was denied a right as a national under Section 503 of the Nationality Act of 1940 [8 U.S.C. 903] by virtue of the disapproval of his application for a passport, which disapproval was executed by consular officials in Hong Kong on February 21, 1951.

Conclusions of Law

I.

This Court does not have jurisdiction of the subject matter [22] of this action.

II.

Under Section 503 of the Nationality Act of 1940 [54 Stat. 1171, 1172; 8 U.S.C. 903], a jurisdictional prerequisite to bringing suit thereunder is that plaintiff must have been denied a right as a national of the United States.

III.

Plaintiff alleges he was denied a right as a national when his application for passport was disapproved on February 21, 1951, by consular officials at Hong Kong; but plaintiff never set forth to the consular officials his claim of citizenship based on the fact that Chew Fong Shew was his mother (not his aunt) and that he was her illegitimate son (and not her nephew).

IV.

Plaintiff cannot state that if the facts as set forth in his amended complaint were set forth to the consular officials he would be denied a passport; the sole basis for the denial of a passport was the disbelief by the consular officials that plaintiff was the son of Chew Tai Kam; no representative of the United States Government has denied that plaintiff is the illegitimate son of Chew Fong Shew because plaintiff has never before the filing of his amended complaint ever claimed he was the illegitimate son of Chew Fong Shew; the denial of a right must occur prior to the filing of an action.

V.

Plaintiff has never been denied a right as a national of the United States.

Judgment

In accordance with the foregoing Finding of Fact and Conclusions of Law, [23]

It Is Ordered:

That the amended complaint on file herein be dismissed.

Dated: 3/10/58.

/s/ HARRY C. WESTOVER,
United States District Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 10, 1958. Entered
March 12, 1958. [24]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Please Take Notice that plaintiff herein appeals to the Court of Appeals, Ninth Circuit, from the judgment entered in the above entitled case on March 12, 1958.

SIDNEY M. KAPLAN and

SIDNEY BROFFMAN,

/s/ By SIDNEY BROFFMAN,

Attorneys for Plaintiff,

Acknowledgment of Service Attached.

[Endorsed]: Filed May 6, 1958.

[Title of District Court and Cause.]

DESIGNATION OF RECORD FOR APPEAL

Appellant hereby designates the following record for filing in the appeal of the above entitled case to the United States Court of Appeals, Ninth Circuit:

I.

Complaint for Declaratory Judgment of Citizenship filed June 28, 1951 in the United States District Court, Northern District of California, under Civil No. 30662.

II.

Answer to Complaint filed August 16, 1951 in the United States District Court, Northern District of California.

III.

Amended Complaint for Declaratory Judgment dated October 23, 1957 filed in the United States District Court, Southern District of California.

IV.

Answer to Amended Complaint for Declaratory Judgment [28] filed October 28, 1957 in United States District Court, Southern District of California.

V.

Findings of Fact, Conclusions of Law and Judgment, signed by Judge Harry Westover and filed March 3, 1958 in United States District Court, Southern District of California.

Dated: June 24, 1958.

SIDNEY M. KAPLAN &

SIDNEY BROFFMAN,

/s/ By SIDNEY BROFFMAN,

Attorneys for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed June 25, 1958. [29]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 32, inclusive, containing the original:

Complaint.

Answer.

Amended Complaint.

Answer to Amended Complaint.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record for Appeal.

Designation of Additional Portions of the Record.

B. One volume of Reporter's Official Transcript of Proceedings had on February 21, 1958.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: August 29, 1958.

[Seal]

JOHN A. CHILDRESS,
Clerk.

/s/ By WM. A. WHITE,
Deputy Clerk.

In the United States District Court, Southern
District of California, Central Division

No. 204-57-HW Civil

CHEW WING LUK,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State,
Defendant.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

Friday, February 21, 1958
10:00 A.M.

Honorable Harry C. Westover, Judge Presiding

Appearances: For the Plaintiff: Sidney Broffman, Esq., Sidney M. Kaplan, Esq. For the Defendant: Laughlin E. Waters, United States Attorney; by Norman Atkins, Assistant United States Attorney. [1]*

The Clerk: No. 204-57-HW Civil, Chew Wing Luk vs. John Foster Dulles, trial re issue whether there was a denial of right of citizenship.

Mr. Broffman: Ready for the plaintiff, your Honor.

Mr. Atkins: Ready for the government.

* Page numbers appearing at top of page of Reporter's Transcript of Proceedings.

The Court: You may proceed. The only thing we are concerned with in this case is the question of a denial of a right.

Mr. Broffman: Yes, your Honor.

The Court: I think I will require the government to present to the court the application that was made.

Mr. Atkins: Yes, your Honor.

The Court: And the denial.

Mr. Atkins: I will have the clerk mark the administrative record under Seal of the State Department.

The Court: It may be marked for identification only.

The Clerk: Defendant's Exhibit A for identification.

(The exhibit referred to was marked Defendant's Exhibit A for identification.)

Mr. Atkins: I am now showing Government's Exhibit A for identification to opposing counsel for inspection. [2]

(Mr. Atkins handing exhibit to counsel.)

Mr. Atkins: The government will offer Exhibit A in evidence, your Honor.

Mr. Broffman: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit A in evidence.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit A.)

Mr. Atkins: Does your Honor wish to examine that at this time?

The Court: No. I suppose that the plaintiff can

take up the burden now. The plaintiff must establish that the affidavit was not right or was not proper or that there had been no denial. The thing I wanted in evidence was the fact that there had been an application filed and the application has been signed by Chew Wing Luk, and that a denial had been made.

Let's see what this says now.

The American Vice Consul in making the denial said:

"In view of the above discrepancies and the faked photograph, it is the opinion of the undersigned that the claim of applicant as the son of Chew Tai Kim is fraudulent. Applicant's affidavit was executed by his father's sister, who has a son living in China who is apparently not presently applying for documentation as an American citizen. The [3] passport application has been disapproved, and the Consulate General has declined to afford applicant facilities for the execution of an affidavit enabling him to travel to the United States."

I wanted to be sure to get that into the record, because I didn't want to make a ruling without there being in the record the application and denial.

Mr. Broffman: At this point, your Honor, also, may I call your attention to the fact that the suit was instituted in the United States District Court in San Francisco on June 28, 1951, which was the date of the filing with the clerk there.

The Court: There is no question, I assume, that the suit was filed in time. There has been no issue about that, although the suit is some six years old.

Nevertheless, as far as I know it was filed in time. The only question I am interested in now is whether or not there had been a denial of the plaintiff's claim on the ground that he was not a citizen.

I assume that the government can rest at this time and the plaintiff can take over and present any evidence it may have on this matter.

Mr. Broffman: Your Honor, we think the government now has the burden of going ahead with the proof. The record of the State Department speaks for itself, that there has [4] been a denial of a claim of citizenship and we, of course, say that is a *prima facie* case of jurisdiction for this court.

The Court: We are coming to the question of procedure and we have this question that was raised the other day. In the trial of a lawsuit, are all the files and records before the court, or is it necessary for the party to present the part of the file which they wish to be part of the record at the time of trial?

We have in the file the original complaint. We have also in the file the amended complaint. The file indicates that the claim as made by the plaintiff to the government was fraudulent.

Is it necessary for the defendant, or the government now to put in the record these various documents or can the court come to a conclusion from reading the file itself?

Mr. Broffman: There is this point. There is no evidence of fraud. We will consider that the application made before the American Consul contains erroneous information, but fraud is something else.

The Court: I don't think that this case can be decided upon the question of fraud. The thing that concerns me is whether or not there can be a denial if the facts are not presented to the government on which to base a denial. If false facts are presented, can there be a legal denial?

Mr. Broffman: It may become very important if these [5] facts were wilfully and deliberately fraudulently made or if they were made in good faith.

The Court: How can there be any other way? Now, it may be that you may be able to show that the plaintiff at the time he made the application did not know that they were fraudulent.

Mr. Broffman: That is what we can show.

The Court: You may be able to establish that. Then I don't know whether it makes any difference whether the plaintiff knew it or not.

Mr. Atkins: That is the position the government has, your Honor.

The Court: Then you have a right to establish it.

Mr. Atkins: Your Honor, the position of the government at this time would be that we are trying the limited issue of denial of a right, that the knowledge of the applicant in Hong Kong as to what he thought the truth was is irrelevant and immaterial to that issue in this case as of now, because whether he knew or not who he was the son of when he made the application in Hong Kong, the record speaks for itself that the denial was predicated on the story he gave them, whether he thought

the story was true or not. We contend he knew the story was not true.

The Court: Counsel, what do you say about the necessity of introducing these documents as evidence in this [6] case, or whether or not the court can consider the file as a whole and come to a conclusion?

Mr. Atkins: It is my opinion, your Honor, that the pleadings filed by the parties are a part of the record and would be so on appeal, and that we have introduced the passport file now, so that your opinion based on the pleadings and the passport file would be sufficient without offering the complaint and amended complaint and those pleadings in evidence, if that is what your Honor has in mind.

The Court: It seems to me it is only common sense to hold that a court in trying a case certainly has before it the pleadings, and the pleadings don't have to be introduced into the record as an exhibit. This matter has only come up very recently in another case, as to whether or not it was necessary to specifically point out in the record the documents that should be considered by the court. I think the court has a right to consider the file as a whole. It is part of the official record here.

Mr. Atkins: I would agree with your Honor. However, if your Honor would feel more secure in having the complaint and amended complaint offered in evidence——

The Court: No, I am not saying that. It is not a question of my security. I am just presenting this to counsel, and if they think it is necessary,

other than just to say the record is before the court, to introduce [7] specifically any of these matters, I will leave it up to the attorneys.

Mr. Broffman: I have no objection to a stipulation that the court file may be considered by the court for the purpose of settling the question of jurisdiction.

Mr. Atkins: I would suggest stipulating them into evidence then. Is that stipulated?

Mr. Broffman: That is stipulated for the limited purpose of deciding the jurisdiction.

The Court: Such may be the stipulation for that limited purpose only.

Mr. Broffman: Does the court desire any evidence as to whether or not the application made to the American Consul was fraudulently made or whether it merely represents a misstatement of facts by the plaintiff?

The Court: Counsel, I assume that if I hold that if there has been no denial, there will be an appeal, and on that assumption I think it would be better for you to bring the party to the stand and let the plaintiff testify, so the Court of Appeals will have the testimony of the plaintiff.

Mr. Broffman: I think that will be desirable.

The Court: It may be possible that the Circuit may say, "Well, if the plaintiff filed an affidavit which was wrong, but which he believed was true, then he shouldn't be penalized." It may be the Circuit will take that point of view. [8]

Mr. Broffman: I think it would be a very important matter, your Honor.

The Court: I would suggest you present any evidence you may have as to the knowledge that the plaintiff had that this was not a true claim.

Mr. Broffman: I call Mr. Chew Wing Luk.

The Court: Are you going to use an interpreter?

Mr. Broffman: Yes.

The Court: Then swear the interpreter.

(Whereupon T. Y. Lin was duly sworn to interpret from English into Chinese and from Chinese into English.)

CHEW WING LUK

called as a witness, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you state your name, please?

The Witness: Chew Wing Luk.

Direct Examination

Q. (By Mr. Broffman): Where were you born, Mr. Chew? A. China.

Q. What village or city?

A. Nom Sing Village.

Q. Do you know what province that is in? [9]

A. Kwangtung.

Q. When were you born?

A. 1921. You want it in the international date or what? That is in the Chinese Republic year.

Q. I think we better stick to the American system of reckoning.

A. Sometimes I do not remember or do not know very much about international calendar.

(Testimony of Chew Wing Luk.)

Q. What is the date on your Chinese reckoning?

A. Well, according to Chinese calendar, it is Chinese Republic 10, seventh month, and 10th day.

Q. How long did you live in Nom Sing Village?

Mr. Atkins: I am going to object to the question, your Honor, as being beyond the scope of our issue here today.

The Court: Overruled.

The Witness: I live there up to the time I left to go to Hong Kong.

Q. (By Mr. Broffman): When was that?

A. I think up to CR 36.

Q. How old were you when you left Nom Sing Village?

A. About 21—correction. About 20 or 21 years old.

Q. With whom did you live in Nom Sing Village?

A. With my grandmother, paternal grandmother, and my foster mother. [10]

Q. Up until the time you were about 10 years old, did you live with your father in Nom Sing Village? A. No.

Q. With whom did you live? Or whom did you regard as your father?

Mr. Atkins: Your Honor, I am going to restate my objection at this time on these grounds. We are apparently about to go through the entire story of the plaintiff at this time. We are not prepared to rebut or present evidence which would rebut or even discredit the credibility of the witness at this

(Testimony of Chew Wing Luk.)

time. We are only prepared and we came to trial today on short notice only by virtue of the fact that we believed we would be trying a limited issue, denial of this person's right in Hong Kong. I believe that this is clear outside the scope, beyond the scope of that issue, and it is irrelevant and immaterial at this time.

The Court: It is purely preliminary. If it is in issue in this case that the plaintiff did not know who his true father and mother were, I think that he should be allowed to so testify.

Mr. Atkins: At this time I would like to make very clear that we object to any testimony and any questions which might be asked on the issue of his knowledge as to the truth or falsity of his claim made to the Consul in Hong Kong. The government's position is that that would be irrelevant. However, [11] if your Honor overrules this objection, we would be at least prepared to cross examine the plaintiff and his mother on the issue of what he did say to the Hong Kong officials, but we are not prepared to go through his entire life history and disprove or prove or corroborate or discredit his testimony on all of these statements which he will make concerning his entire life story.

The Court: I am going to have to overrule the objection, but I am going to limit the plaintiff to very meager proof. All I want is to establish the fact that he lived in a certain village in a certain home and went up to Hong Kong when he was 20 or 21, when he made his application. I don't want

(Testimony of Chew Wing Luk.)

to go into the family relationship except he lived in the village with someone who he supposed was a relative, that's all.

Q. (By Mr. Broffman): Mr. Chew, I show you Exhibit A in this case and show you an application for a passport on the reverse of which there is typed the words Chew Wing Luk, above which are written some characters, apparently in Chinese. Can you identify those characters?

A. I recognize it.

Q. What is it? A. Chew Wing Luk.

Q. Is that your signature? [12] A. Yes.

Q. There is also a picture attached to the same exhibit. Is that your picture? A. Yes.

Q. Turning back to the first page, the front page of the application for passport, about the middle of the page there is, "My father Chew Tai Kim, also known as Sui Fa."

Did you believe that Chew Tai Kim was your father at the time you made this application for passport?

Mr. Atkins: I object to the question, your Honor.

The Court: Overruled.

Mr. Atkins: Can I state the grounds for the objection, your Honor?

The Court: Yes.

Mr. Atkins: I object to the question on the ground it is irrelevant to the issue as to whether this plaintiff was denied the right of a citizen.

The Court: Overruled.

(Testimony of Chew Wing Luk.)

The Witness: At that time I believed he was my father.

Q. (By Mr. Broffman): Did you ever live in the household of Chew Tai Kim?

A. I have lived in his household, but I have never lived together with him in that house. [13]

Q. Did you regard, while you were living with Chew Tai Kim, him as being your father?

Mr. Atkins: Same objection, your Honor.

The Court: Same ruling.

The Witness: At that time I was young. I call him father, but I did not know whether or not he was my true father.

Q. (By Mr. Broffman): Did you believe him to be your father?

A. Yes, I believed he was my father.

The Court: May I inquire, how old were you when you lived in the home with your supposed father?

The Witness: You mean the time when my father lived there?

The Court: Yes.

The Witness: I have never seen him.

The Court: You have never seen him?

The Witness: No, I have never seen him.

Q. (By Mr. Broffman): Is Chew Tai Kim alive? A. He is dead.

Q. How old were you when he died?

A. About the time he die, I was about 10 years old, but I have never seen him.

(Testimony of Chew Wing Luk.)

The Court: May I inquire, who told you he was your [14] father?

The Witness: That was Wong Shee, my foster mother.

The Court: What do you mean by foster mother?

The Witness: That was my former mother.

The Court: What do you mean by your former mother?

The Witness: That is my mother.

The Court: Is the lady in the court room the person you say was your foster mother?

The Witness: The one in the court, the lady in the court, is the mother who gave birth to me. That is my real mother. But when I talk about former mother, that is the one whom I lived with before at that time. I thought she was my mother.

The Court: Just a minute now. Did the information relative to the alleged father come from your former mother or from your real mother? Strike that.

Who told you that your father, your alleged father was your father, your former mother or your real mother?

The Witness: The former mother told me about that father.

The Court: In your application you say your mother is deceased. Who told you that she was dead?

The Witness: I witnessed her death. But the time she die, I was there, but then—

The Court: This is your foster mother? [15]

(Testimony of Chew Wing Luk.)

The Witness: That's right.

The Court: When did you first see your real mother?

The Witness: I first learn about it some time last year in the summer.

The Court: That is 1957?

The Witness: Yes.

The Court: After you had come to the United States?

The Witness: I beg your pardon. I didn't finish what I wanted to say. But I have seen this lady since I first came to this country, but at that time right after arriving, I used to call her aunt.

The Court: Did you ever see the woman you now identify as your real mother before you came to the United States?

The Witness: I saw her in China.

The Court: When?

The Witness: 1936.

The Court: Was that after the complaint had been filed in this action or before? Strike that. Was that after you had filed your application to come to the United States, or before?

The Witness: What do you mean?

Mr. Broffman: The application is dated 1951, your Honor.

The Court: The application for you to come to the United States was filed on February 2, 1951. Did you see [16] your real mother before February 2, 1951?

(Testimony of Chew Wing Luk.)

The Witness: I saw her before this thing was signed.

The Court: In 1936?

The Witness: 1935 and 1936, a few years, I have seen her a few years.

The Court: Where did you see her?

The Witness: Nom Sing Lee Village.

The Court: In China?

The Witness: Yes.

The Court: When you saw her, did you call her mother, or aunt?

The Witness: Aunt?

The Court: Is your true mother's name Shew Fong?

The Witness: Shew Fong Shew.

The Court: In the file we find an affidavit signed by your mother, which is dated December 8, 1947. Do you know whether or not your mother was in China in 1947, or was she in the United States?

Mr. Broffman: Is that his real mother you are talking about?

The Court: Yes, the real mother.

The Witness: She was in the States.

The Court: Was your real mother in China when you filed the application to come to the United States in February [17] 1951?

The Witness: In the States.

Mr. Atkins: Your Honor, could I have the question and answer?

The Court: Yes. Read it.

(Record read.)

(Testimony of Chew Wing Luk.)

The Court: In the application you gave your father's name as Shew Tai Kim, also known as Sui Fa, born in San Francisco. That is not correct, or not true, is that so?

The Witness: Formerly I consider it was true, but now I know it is false.

The Court: Also in your application you gave your mother's name as Wong Shee, who was deceased. That, also, was not true?

The Witness: Yes, also untrue.

The Court: All right.

Q. (By Mr. Broffman): Mr. Shew, when did you find out the true facts concerning the identity of your mother?

A. It was last summer in your office, you told me to tell the truth about this thing, so the mother told everybody that, "You are my son, true."

Q. At the time you made the application to the American Consul, did you make that application and set forth the information thereon in good faith, believing those [18] matters to be true?

A. That's right.

Q. Do you know where the person you regarded as your father, Chew Tai Kim, died?

A. In the States.

Q. Do you know when he died?

A. I don't know when he died, but I heard of it.

The Court: You said you were present at your foster mother's death.

The Witness: Yes.

(Testimony of Chew Wing Luk.)

The Court: You were not present at your alleged father's death?

The Witness: No.

Mr. Broffman: May I have this marked as an exhibit, please?

The Clerk: Plaintiff's Exhibit 1 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 1 for identification.)

Mr. Broffman: I have here a certified copy of Chew Tai Kim's death certificate.

Mr. Atkins: I will object to the introduction of that in evidence, your Honor, on the ground it is irrelevant, immaterial and incompetent to the issue we are trying here today. I fail to see how it is relevant at all to the issue we are trying today, your Honor. [19]

The Court: It might be a different situation if the alleged father was entirely fictitious. This may show it was not entirely fictitious. We do have a party who this party claimed to be his alleged father, who actually lived and who is dead.

Mr. Atkins: I will object to the introduction of that document on the ground that there is no adequate foundation laid.

The Court: I will overrule the objection and allow the document to be introduced in evidence for a limited purpose only, that is, to establish the fact that there was a party by the name of Chew Tai Kim, also known as Sui Fa, and that he is dead.

(Testimony of Chew Wing Luk.)

Mr. Broffman: May I also point out, your Honor, that the document shows that there was a residence—

Mr. Atkins: I will object to any part of the document which refers to anything except the proof of death, your Honor.

The Court: I am going to sustain the objection upon the ground that the proper foundation has not been laid. All we have is a photostatic copy.

Mr. Broffman: It is a certified copy, your Honor. That is the way those are issued. It has the seal of the State on it.

The Court: Well, I will only allow it to be introduced [20] for the purpose of showing that there was actually a Chew Tai Kim, also known as Sui Fa, and that he is now deceased.

Mr. Atkins: I will point out for your Honor that the name is spelled J-e-w T-a-i something that looks like K-a-n, but it is not Chew. It is a J.

The Court: When you have tried as many of these cases as I have, you will find out you cannot rely upon the spelling of Chinese names by others.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 1.)

Mr. Broffman: I have no further questions.

Cross Examination

Q. (By Mr. Atkins): You do not deny that at the time you made the application for a passport,

(Testimony of Chew Wing Luk.)

which is Defendant's Exhibit A, that you listed your father to be Chew Tai Kim, also known as Sui Fa, and your mother to be Wong Shee?

A. I do not deny it.

Q. At the present time do you deny that you are claiming that your mother is a person named Chew Fong Shew, and that your father is unknown? A. Yes. [21]

Mr. Broffman: May I have that question and answer read, please?

The Court: Yes, read it.

(Record read.)

Mr. Broffman: He doesn't deny that.

The Court: Maybe he doesn't understand the question. I think you are right.

Mr. Broffman: The question is confusing.

The Court: It is ambiguous.

Mr. Broffman: He has got a double negative there.

The Court: Instead of saying deny, ask if you claim, and then the answer would be all right. You better rephrase the question.

Q. (By Mr. Atkins): Do you claim at the present time that your real mother is a person named Chew Fong Shew and that your real father is unknown to you? A. Yes.

Q. Is the person you call Chew Shee the same person who is known as Chew Fong Shew?

A. When I say about Chew Shee?

Mr. Atkins: Is that his answer?

The Interpreter: He is asking you.

(Testimony of Chew Wing Luk.)

Mr. Atkins: I will move to strike the answer and ask that the witness be made to answer the question. [22]

The Court: Read the question.

(Question read.)

The Witness: Same person.

Mr. Atkins: May we have a recess, your Honor?

The Court: Yes. We can take a recess. We will recess now until 10 minutes after 11:00.

(Recess.)

Q. (By Mr. Atkins): Is the person Wong Shee the same person as Chew Fong Shew?

A. No, not the same.

Q. Who is Wong Shee?

A. The one died in China.

Q. Who do you mean by "the one"?

A. The one who brought me up.

The Court: Your foster mother?

The Witness: Yes.

Q. (By Mr. Atkins): You claim last summer in the office of Mr. Broffman you learned for the first time that the lady sitting in the court room here, Chew Fong Shew, was your real mother, is that correct? A. Yes.

Q. Will you give all of the circumstances as best you can recall of that meeting in Mr. Broffman's office? A. Yes. [23]

Q. What were the circumstances?

A. She said that, "I am telling you now that I am your real mother."

(Testimony of Chew Wing Luk.)

Mr. Atkins: Move that the answer be stricken as not responsive to the question.

The Court: I don't know what you mean by the circumstances. Denied, because I think what was said is part of the circumstances.

Q. (By Mr. Atkins): Who was present at the meeting in Mr. Broffman's office?

A. Mr. Broffman, Mr. Caplan, my mother, and myself.

Q. After you were all present in Mr. Broffman's office, did your mother just speak out of the clear blue sky and say that you were her real son and that she was your real mother?

Mr. Broffman: I object to the question on the ground that it is rather ambiguous, "out of a blue clear sky."

The Court: Although the sky is the same in China as it is over here, I don't know what the meaning is. I will sustain the objection.

Mr. Atkins: I will withdraw the question.

Q. Will you give us the conversations that took place leading up to Chew Fong Shew's statement that you were her [24] son and she was your real mother?

A. She said, "I have spent a lot of effort in getting you to the United States, and I might as well let you know now that I am your real mother."

Q. Did she tell you why she had not told you that she was your real mother previously to the meeting in Mr. Broffman's office?

A. Yes. She said she was not legally married,

(Testimony of Chew Wing Luk.)
but she had me. She didn't dare to tell me about it.

Q. Were you surprised? A. No.

Q. Isn't it true that you consider that the person named Wong Shee, who had previously died in China, didn't you consider that that person was your mother up until the meeting in Mr. Broffman's office? A. Yes.

Q. Then weren't you surprised when you found out that that person was not your real mother and the Chew Fong Chew, whom you had regarded as your aunt for your entire lifetime, weren't you surprised when you found out that Chew Fong Shew was your real mother?

A. A little surprised.

Q. Had you know about it previously?

A. No.

Q. You were just a little bit surprised? [25]
[No answer in copy.]

Q. Have you ever lived in Hong Kong?

A. Yes.

Q. Where did you live in Hong Kong?

A. 116 Connaught Road West.

Q. You lived on the second floor, didn't you?

A. I didn't quite finish. The shop called Wau Wo Cheong.

Q. Are you through now? A. Yes.

Q. You lived on the second floor, did you not?

A. The Chinese, they are third floor, but American call it second floor.

Q. You lived in a room, is that correct?

(Testimony of Chew Wing Luk.)

A. No.

Q. You lived in a cubicle?

A. Not cubicle. People lived there and they use just beds, bed space, rather.

Q. How long did you live there?

A. Over three years.

Q. What date? A. 1947 to 1951.

Q. When you lived at 116 Connaught Road, did you meet any persons living at that same address?

Mr. Broffman: I don't know whether this is preliminary or what. [26]

The Court: I don't either. Counsel for the government objected and I sustained the objection and only allowed you to make a very sketchy presentation of the fact that he lived with a certain party and he thought that party was his mother and that he thought so-and-so was his father. I didn't allow you to go into any details. What is the purpose of this?

Mr. Atkins: The purpose of this, your Honor, is to show that this person has made statements on the direct issue of what we are trying today, that this is preliminary to that point.

The Court: Overruled.

Q. (By Mr. Atkins): Did you know a person named Fong Se Cheun? A. I don't know.

Q. You deny that you ever met a person by the name of Fong Se Cheun living at the address 116 Connaught Road between the years 1947 and 1951?

A. Don't know him.

Q. You never met him?

(Testimony of Chew Wing Luk.)

A. Maybe I have met him, but I don't know him.

Q. I show you a photograph which has a picture of three men. Can you identify those three men?

A. I know him, but I don't know what his name is, just somebody living there. You know me, but I don't know you, see, just looking at him. I don't know what is his name. [27] I have seen him.

Q. Which one have you seen?

A. I seen this guy and this guy. I never see this guy. I have seen No. 1 up there and No. 2, but not No. 3, but I don't know the name.

Q. You don't know what No. 1's name is?

A. No.

Q. Have you seen No. 3?

A. No, I never see No. 3. I see No. 1 and No. 2, but I don't know his name, see.

Mr. Atkins: I have neglected to mark this for identification, your Honor.

The Court: It may be marked for identification only.

The Clerk: Defendant's Exhibit B for identification.

(The exhibit referred to was marked as Defendant's Exhibit B for identification.)

Q. (By Mr. Atkins): Will you take a very good look at No. 3 and say whether you have ever seen that person before?

(Testimony of Chew Wing Luk.)

Mr. Broffman: I am going to object to the question as immaterial and irrelevant to the issue before the court this morning.

The Court: Overruled. [28]

The Witness: No. I see No. 1 and No. 2. I have seen only No. 1 and No. 2, but I don't know their names. However, I haven't met No. 3 or seen No. 3.

Q. (By Mr. Atkins): Isn't it a fact that No. 3 is a picture of yourself?

A. Let me see it clear.

Mr. Broffman: I think the record ought to show that the witness has been shown a photograph which is about 2 by 2½ in size, on which there appear three figures with a very dark background, and I leave it to the court to determine how distinct those pictures are.

The Witness: Yes.

Q. (By Mr. Atkins): What does that mean?

A. Yes, that is my picture.

Q. No. 3 is you? A. Yes.

Mr. Atkins: I will offer this photograph in evidence, your Honor.

The Court: It may be received in evidence.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit B.)

Mr. Broffman: May I object on the ground of its immateriality and irrelevancy? [29]

The Court: Overruled.

The Clerk: Defendant's Exhibit B in evidence.

Q. (By Mr. Atkins): Did you ever talk to the person who is No. 1 in that photograph?

(Testimony of Chew Wing Luk.)

A. I did.

Q. Isn't that person's name Fong Se Cheun?

A. I don't know his name.

Q. You just think hard now.

A. That is the fact.

Q. Can you remember what that person's name is? Might it be Fong Se Cheun?

The Court: I don't think you can ask him if it might be. Anything might happen. He testified he does not know the name. I know a lot of people by face, but I don't know their name.

Q. (By Mr. Atkins): Were you a friend of the person in that picture, No. 1? A. Yes.

Q. Did you ever talk to him?

A. Yes, I talk to him, see, but when I was at Hong Kong I go to play basketball and then for a cup of coffee, that's all.

Q. Just a passing acquaintance? [30]

A. Yes.

Q. Did you ever tell that person, No. 1 in that photograph, that you were going to the United States to join your mother in one of the years between 1947 and 1951?

A. I didn't tell him that I was going to see my mother, but I told him I was going to see my aunt.

Q. Did you ever show him letters from San Francisco, postmarked San Francisco, that were signed "Mother"?

A. I might have, but I don't remember clear.

Q. Did you ever receive letters from any person

(Testimony of Chew Wing Luk.)
in San Francisco signed "Mother" in the years between 1947 and 1951?

Mr. Broffman: Object to the question unless a foundation is laid as to whom these letters were addressed.

The Court: Well, change your question.

Mr. Atkins: I will withdraw the question.

Q. Your previous answer was that you might have shown him letters signed "Mother." My question now is, did you ever receive letters addressed to you postmarked San Francisco, which were signed "Mother"? A. No.

Q. Was there a person, a cashier on the second floor of 116 Connaught Road, a person who worked as a cashier on the second floor at 116 Connaught Road, what you call the third floor, apparently?

A. Yes.

Q. Do you know what his name is?

A. Fong Ai Won.

Q. Did you know any person who acted as cashier by the name of Chan Hung Tong?

A. I have not met a person by the name of Chan Hung Tong, but I have met Chan Hang Tong.

Q. Was he a cashier on the second floor of 116 Connaught Road in Hong Kong?

A. No. Fong Ai Won was the person who took charge of the accounts.

Q. When you received mail at 116 Connaught Road, Hong Kong, where did you pick it up?

A. Those letters were forwarded to that address by postman. When the postman delivered those let-

(Testimony of Chew Wing Luk.)

ters, it is the fellow by the name Chang Hang Tong who was in charge of that shop, rather a clerk or something, not manager though, but he would sign for receipt and then he pass the letters to me.

Q. Did you receive letters postmarked San Francisco from Chang Hang Tong at 116 Connaught Road? A. Yes.

Q. Did you ever tell Chang Hang Tong that those letters were from your mother?

A. I meant aunt-mother, not mother.

Q. You say you meant aunt-mother? [32]

A. Yes. Chinese call the aunt the aunt-mother, not real mother, see. I was calling my auntie my aunt-mother, because I tell them, Chang Hang Tong, is my mother that send me money, just they call it short.

(The witness answered in English from here until further indicated.)

Q. Did you ever tell them it was from your mother? A. Yes, that is aunt-mother.

Q. Did you tell Chan Hang Tong it was from your mother or from aunt, which?

The Court: He testified he said either.

The Witness: Sometimes I say aunt, sometimes I say mother. The Chinese is aunt-mother and mother. Sometimes I call mother, sometimes I call aunt-mother.

Q. (By Mr. Atkins): Sometimes you told him it was from your aunt? A. Yes.

Q. And sometimes you told him it was from your mother?

(Testimony of Chew Wing Luk.)

A. Yes, aunt-mother for my aunt. They call them aunt-mother, same thing.

Q. Is there a word in Chinese that means aunt-mother?

A. Yes. Aunt-mother is aunt, you know, Chinese, the aunt-mother, and uncle-father is uncle, the Chinese call them.

Q. I am going to ask you a question and I want you to answer it in Chinese through the interpreter, this one question. [33] When you answer Chang Hang Tong, when you told him that you received these received these registered letters from San Francisco, when you told him who they were from, did you use the Chinese word that means aunt-mother or did you sometimes use the word aunt and sometimes use the word mother?

A. Yes, I did admit to him that I have received letters from the people from San Francisco using this three addresses, this three—

The Court: Let me ask a question of the witness and I want it put in Chinese and I want the answer in Chinese.

What is the word in Chinese that means aunt-mother?

The Witness: There is such a term by the name of aunt-mother in the Chinese language but I can't explain to you why it is called aunt-mother.

The Court: Say the term aunt-mother in Chinese.

(Witness speaking in Chinese.)

(Testimony of Chew Wing Luk.)

The Court: I will ask the interpreter does that mean aunt-mother?

The Interpreter: Yes.

The Court: Translate that word into English.

The Interpreter: One is aunt and one is actually mother, but the two characters have that meaning when translated into English.

The Court: I will ask the interpreter, is there a Chinese term aunt-mother? [34]

The Interpreter: Yes.

The Court: There is such a term?

The Interpreter: Yes.

Q. (By Mr. Atkins): Did you ever tell Chan Hang Tong when you received a letter that it was from your plain mother? A. Yes.

Q. Were those letters which you received, which you told him were from your mother, postmarked San Francisco?

A. Those letters were sent to me by my mother from San Francisco.

Q. Did you tell Chan Hang Tong that they were from your mother?

A. No, I didn't tell him that those are from my mother, but from my aunt.

The Interpreter: He used the term aunt-mother in Chinese.

Q. (By Mr. Atkins): I asked you a question a little while ago in which I said did you ever tell Chan Hang Tong that you had received a letter postmarked San Francisco from your plain mother,

(Testimony of Chew Wing Luk.)

not aunt-mother, and you answered yes, isn't that correct?

Mr. Broffman: I object to the question as assuming some facts not in evidence. The original question was, did you receive letters from your plain mother, the woman he now [35] understands to be his plain mother.

The Court: He has answered the question yes.

Mr. Broffman: He said yes, but the next question was, did you tell this person that you received letters from your mother, and the answer was, "I told him from my aunt-mother."

The Court: Objection overruled.

The Witness: The answer is yes.

Q. (By Mr. Atkins): So sometimes you told Chan Hang Tong it was from your aunt-mother and sometimes you told Chan Hang Tong that these letters which were postmarked San Francisco were from your mother. A. Yes.

Q. Did you know a person named Fong Kum Lim at 116 Connaught Road? A. Yes.

Q. Was he a friend of yours? A. Yes.

Q. Did you tell him you had listed your mother as your aunt in order to go to the United States?

A. Yes.

Q. What year was that?

A. 1948 or 1949, something like that.

Q. Did you understand the question I just asked you? [36] A. Yes.

Mr. Broffman: I wonder if we may have the question read back.

(Testimony of Chew Wing Luk.)

The Court: Read the question again.

(Question read.)

The Witness: Yes.

Mr. Atkins: No further questions, your Honor.
I don't see any point in asking any more questions.

The Court: You don't have to argue about it.

Any redirect?

Mr. Broffman: I would like to get the last question clarified, if I may.

Redirect Examination

Q. (By Mr. Broffman): Did you tell this person that you had listed your real mother, that you knew your real mother, and that you put her down as your aunt on the application?

A. I told those people that because those people ask me whether those letters were from my mother and I said yes. However, I meant my aunt.

Q. Do you mean your aunt-mother when you told them you had put down on the application that you were going to your aunt?

The Interpreter: I beg your pardon? [37]

Q. (By Mr. Broffman): Did you intend to tell them that you were going to your aunt-mother?

A. Sometimes they ask me whether I was going to see my mother. I answered them yes. Sometimes I also told them that I was also going to see my aunt.

Q. Was that the same person you had in mind that you told them you were going to see? Is that the same individual when you talk about aunt and

(Testimony of Chew Wing Luk.)
you talk about mother, were you talking about the same person?

Mr. Atkins: Before the answer——

The Witness: Yes.

Mr. Atkins: Was there an answer given?

The Interpreter: "Yes."

Q. (By Mr. Broffman): Is there a Chinese term mother-mother? A. Yes.

Q. And there is another term aunt-mother, is that correct?

Mr. Atkins: I will object to the question, your Honor, on the ground it calls for a conclusion of the witness and he is not qualified as an expert in the Chinese language.

The Court: Overruled.

Mr. Atkins: He can only testify what he means by the words he says. [38]

The Court: Overruled.

The Witness: Yes.

Q. (By Mr. Broffman): Now, did you know that your aunt was your real mother at the time you were in Hong Kong?

A. Don't know.

Mr. Broffman: I have nothing further. Just a moment, please.

The Court: Any questions?

I would like to ask the witness a question before we take our noon recess.

Who is Chew Wing Fook?

The Witness: He is now deceased.

The Court: Who was he before he died?

(Testimony of Chew Wing Luk.)

The Witness: Formerly I consider him as my aunt.

The Court: Aunt?

The Witness: Formerly I recognize him as my elder brother.

The Court: You say he is now dead?

The Witness: Yes.

The Court: When you signed the application to come to the United States on February 2, 1951, did you consider Chew Wing Fook as your brother?

The Witness: Yes.

The Court: Did he live in the same house with you [39] in the village?

The Witness: No, he did not.

The Court: Was he older or younger than you?

The Witness: He was older than I.

The Court: How much?

The Witness: Two years older than I am.

The Court: You never lived with Chew Wing Fook at all?

The Witness: No.

The Court: Where did he live?

The Witness: I don't know where he lived.

The Court: Did you ever see him?

The Witness: Yes.

The Court: Where?

The Witness: In Hong Kong.

The Court: You never saw him before you went to Hong Kong?

The Witness: I saw him.

(Testimony of Chew Wing Luk.)

The Court: You never saw him before you went to Hong Kong?

The Witness: I saw him even before.

The Court: When did you first see him?

The Witness: He was a villager of mine.

The Court: Lived in the same village?

The Witness: Yes. [40]

The Court: Didn't live in the same house?

The Witness: No.

The Court: With whom did he live?

The Witness: I don't know.

The Court: How many houses were in the village?

The Witness: Eight houses.

The Court: And you don't know which house he lived in?

The Witness: Once he had lived in the same house in the village, but I don't know how he came to live in the house and I didn't know where he had gone to.

The Court: How old were you when you left the village?

The Witness: About 25 or 26 years old.

The Court: Was Chew Wing Fook in the village when you left to go to Hong Kong?

The Witness: When I left for Hong Kong, I didn't see him.

The Court: How old were you the last time you remember seeing Chew Wing Fook?

The Witness: About 29.

The Court: Is that in Hong Kong?

(Testimony of Chew Wing Luk.)

The Witness: Yes.

The Court: How old were you when you last saw Chew Wing Fook in the village? [41]

The Witness: About 25.

The Court: You saw Chew Wing Fook when you were about 25 years of age in the village?

The Witness: Yes.

The Court: Do you know what house he was living in at that time?

The Witness: Same house with me.

The Court: How long had he been living in the same house with you?

The Witness: Over 10 years.

The Court: Then he had been living in the same house with you from the time you were 15 years until you were 25 years of age?

The Witness: That's right.

The Court: How many people live in the house?

The Witness: When do you mean?

The Court: Between the time you were 15 and 25 years of age.

The Witness: About six or seven persons.

The Court: Was there a person in the house whom you called mother?

The Witness: Yes.

The Court: Did Chew Wing Fook call this same woman mother?

The Witness: Yes. [42]

The Court: When did you first find out that Chew Wing Fook was not your brother?

(Testimony of Chew Wing Luk.)

The Witness: Last year my mother told me about it.

The Court: In the attorney's office?

The Witness: Yes.

The Court: You thought that Chew Wing Fook was your brother until the time when your mother told you about it in the attorney's office, up until that time you thought Chew Wing Fook was your brother?

The Witness: Yes.

The Court: And Chew Wing Fook is dead?

The Witness: Since I saw him in Hong Kong, I don't see him any more. I heard somebody said that he is dead.

The Court: All right. I haven't any other questions.

Mr. Atkins: I have one or two, your Honor.

Recross Examination

Q. (By Mr. Atkins): In Hong Kong, did you ever go by the name of Fong Nie Kim?

A. No, but some people call me by this as my nickname.

Mr. Atkins: No further questions.

The Court: Any other questions? [43]

Mr. Broffman: I haven't any questions.

With the court's permission, I would like to ask the interpreter whether there are two Chinese words, two different Chinese words for the word "surprise."

Mr. Atkins: Mr. Broffman, do you want to call the interpreter?

The Court: Now, counsel, in these cases we are very informal in asking the interpreter for information about the Chinese language. Even interpreters won't agree as to what the Chinese language is or what the words mean.

Mr. Broffman: Earlier in the testimony he used the Chinese word for surprise. Do you mind repeating that word?

The Interpreter: (Complying.)

Mr. Broffman: In another dialect, is there also a Chinese word for the same term?

The Interpreter: What do you mean?

Mr. Broffman: Is there another word that means surprise?

The Interpreter: What dialect are you using? I want to find out that first.

The Court: Well, the witness can testify when she comes on the stand that there are two meanings. I have found out when we try these Chinese cases we cannot evaluate them in the English language or custom. It is impossible.

The Interpreter: I would like to clarify a [44] little by the word I just used. It could be written in the written Chinese. We have such characters to explain those words. There are two characters, but if you pronounce these two characters in different language, it may differ quite a bit. For example, I am using Cantonese here. The two characters are pronounced (speaking Chinese). But in case I use Mandarin to pronounce these two characters, it will

mean (speaking Chinese) completely different. That is why I like to ask you what dialect would you like these characters to be pronounced.

Mr. Broffman: I was wondering whether the word (speaking Chinese) translated into English has the same meaning that you use for surprise.

The Interpreter: Not that I know of, because I don't know what word you are driving at.

Mr. Atkins: May I ask the witness a question?

The Court: Yes.

Mr. Atkins: Do you understand some English?

The Court: It has been apparent that he understands a great deal of English because he has been answering the questions in English sometimes. I find out, however, a lot of these Chinese would rather have the questions put to them in Chinese and answer in Chinese rather than to rely upon the English. This witness understands English to some extent. [45]

Mr. Atkins: I would like to ask the witness, your Honor, if he has any fault to find with the translation or the interpreting that has gone on in this court room today.

The Court: I think that is outside the issue in this case, whether he has any fault to find or not. My experience has been even the interpreters can't agree as to interpretation sometimes.

The Interpreter: Just now I heard the lady speak the see hip. I agree with her there is such a term in see hip. That means surprise exactly in see hip dialect.

The Court: I don't think it makes any difference

whether this witness was a little surprised, greatly surprised, or medium surprised.

The Interpreter: But I was using Cantonese all during the session here.

The Court: We will stand at recess until 2:00 o'clock this afternoon.

(A recess was taken to 2:00 o'clock p.m.) [46]

February 21, 1958, 2:00 o'clock p.m.

The Court: We are waiting for your next witness. Call your next witness.

Mr. Broffman: Chew Fong Shew.

CHEW FONG SHEW

called as a witness by and on behalf of the plaintiff, being first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you state your name?

The Witness: My name is Chew Fong Shew.

Direct Examination

Q. (By Mr. Broffman): Mrs. Chew, is Chew Wing Luk your son?

A. Yes, Chew Wing Luk is my son.

Q. When was he born?

A. He was born Chinese Republic 10-7-10.

Q. Where was he born?

The Court: Let's have that date translated.

The Interpreter: July 10.

The Court: What year?

The Interpreter: 1921, July 10.

Q. (By Mr. Broffman): Where was he born?

The Court: What is it?

(Testimony of Chew Fong Shew.)

The Interpreter: That is August 13, 1921.

The Witness: No, August 10.

The Interpreter: August 13, 1921.

The Witness: 1921, July 10, I said.

The Interpreter: I am translating the date according to the book.

The Court: May I ask the witness, the Chinese birth date is CR 10-7-10?

The Witness: Yes, Chinese calendar.

Q. (By Mr. Broffman): Where was he born?

A. Nom Sing Lee Village.

Q. Do you know the name of his father?

A. I forget. I don't remember his father's name.

Q. Were you ever married to his father?

Mr. Atkins: I will object, your Honor. We are getting into the whole story now and not limiting ourselves to the issue of the denial.

The Court: Overruled.

The Witness: No marry.

The Court: May I inquire, what was the name of the village?

The Witness: Nom Sing Lee. [48]

Q. (By Mr. Broffman): Did you ever live in China with Chew Wing Luk as his mother?

A. When I was living in Nom Sing Lee, I considered as his aunt, considered him as my nephew.

Q. When did you first tell him that you were his real mother?

A. I went to Mr. Caplan's office and he asked me several times, and I told him the truth last summer.

(Testimony of Chew Fong Shew.)

Q. Before that, before last summer, and while you were in the United States, did you ever write to Chew Wing Luk any letters or postcards?

The Court: Do you need an interpreter?

The Witness: Yes.

The Court: Then don't answer in English, but let the interpreter translate.

The Witness: Sometimes I answer in English and something I don't understand.

The Court: You answer in Chinese.

Now, read the question.

(Question read.)

The Witness: I was living together with him in Los Angeles, so I didn't send any letter to him.

Q. (By Mr. Broffman): While he was in China and you were in the United [49] States, did you send any letters or postcards to him? A. Yes.

Q. Did you write these letters yourself?

A. I asked some of my friends to do it for me.

Q. Do you know how these letters or postcards were signed insofar as your relationship to Chew Wing Luk is concerned?

A. I used the name Chew Fong Shew, but I address him as my nephew.

Q. Did you sign it as mother, aunt, or aunt-mother, or uncle?

A. I sign it Chew Fong Shew and he address me as aunt.

Q. At the end of the letter, did you sign your name yourself or did your friends who wrote the letter sign your name for you?

(Testimony of Chew Fong Shew.)

A. I did not sign those letters. My friends did it for me.

Q. Did you see some of these letters before they were mailed?

A. I didn't see them, but after those letters are written, I just go and buy a stamp and send it over through registered mail.

Q. Did you ever tell your friends or did you ever write yourself at the end of a letter, Mother, Chew Fong Shew? [50] A. No.

Mr. Atkins: Objection, your Honor. He is leading the witness terribly.

The Court: Overruled.

The Witness: I just told them to have the letters addressed to a nephew.

Mr. Broffman: I have nothing further.

Cross Examination

Q. (By Mr. Atkins): You claim you gave birth to Chew Wing Luk in the village of Nom Sing Lee, is that correct? A. Yes.

Q. There are only eight houses in the village of Nom Sing Lee, are there not? A. Yes.

Q. And yet all the villagers considered you to be Chew Wing Luk's aunt, not his mother, is that correct? A. That's right.

Mr. Atkins: No further questions.

The Court: May I ask the witness a question? Do you know a party by the name of Chew Wing Fook?

(Testimony of Chew Fong Shew.)

The Witness: That is my aunt's son, and also the son of Chew Tai Kim.

The Court: Is he dead or alive? [51]

The Witness: Now I don't know because I have received no news about him.

The Court: I don't have any other questions.

Mr. Broffman: I would like to have the interpreter ask the question again as to who Chew Wing Fook is. I don't think she got it correctly.

The Court: Go back and read the question. I said who is Chew Wing Fook.

The Witness: That is my nephew.

The Court: Is that satisfactory? That is what she said before.

Mr. Broffman: She said my brother's son and my aunt and she meant, I am sure, Chew Wing Fook's aunt. It obviously couldn't be her brother's son as well as her aunt's son.

The Witness: That's right. I mean No. 2 brother. I am sorry.

Mr. Broffman: She got the word aunt in there.

The Court: I have no further questions.

Mr. Broffman: I have nothing further.

Mr. Atkins: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Any other testimony?

Mr. Broffman: That's all. [52]

The Court: Does the government have any other testimony?

Mr. Atkins: No, your Honor.

(Discussion between court and counsel.)

The Court: I am going to find that the plaintiff hasn't been denied a right.

Mr. Atkins: Your Honor, I think I would be obliged to move to dismiss on the basis the court lacks jurisdiction, because there has been no denial of a right.

The Court: That is my ruling, that we don't have any jurisdiction, that is, the plaintiff has no right to be here because he was not denied a right prior to the filing of the complaint. He may have been denied a right after the complaint was filed, or he may be denied a right if he is returned to China, but the theory is he wasn't denied a right prior to the filing of the complaint.

Mr. Broffman: Because the statements on his application were not true or at least were different than from what now are alleged?

The Court: The statements were not true, but the Vice Consul specifically found that he was not the son of Chew Kai Tim.

Mr. Broffman: This court is not bound by that. That is merely a conclusion of the American Consul based on, as far as this court is concerned, a lot of hearsay. May I [53] point out to the court that the State Department issued a certificate of identity and before they can do that they must be satisfied that there was good faith and a substantial basis to the claim.

Mr. Atkins: May I make a correction, your Honor. The only reason a certificate of identity was granted was because the Attorney General allowed

a certificate of identity to be granted and not because the Consul thought there was any good faith involved. The Consul didn't believe there was good faith and denied the passport and certificate of identity. However, the Attorney General, on appeal to the Attorney General, did allow a certificate to be issued. There was no determination of good faith by any Consul in Hong Kong.

Mr. Broffman: If your Honor will carefully look at 503, your Honor will find that good faith and a substantial claim must be established. We certainly do not have to agree with the American Consul. As a matter of fact, there is a constant battle with the American Consuls. They make their decisions upon investigations which may be full of hearsay, rumor, and draw their own conclusions. What they have decided is certainly not evidence, and that is one of the reasons why we have this particular section, so that a man can get a judicial determination, not an administrative determination, of his citizenship. Insofar as this particular issue before us is concerned, I think the only thing that has [54] to be taken into consideration is the application.

The Court: I wish the findings would show that the plaintiff filed an application claiming that his father was Chew Tai Kim and the application was denied on the ground that he was not the son of Chew Tai Kim and that there was no denial of a right prior to the filing of this suit.

I don't think it makes any difference whether the plaintiff believed he was the son of Chew Tai Kim

or whether he didn't believe it. As far as I am concerned, this application might have been made in good faith, but the problem that is presented to me is whether or not when you make a claim that your father is so-and-so, and the Vice Consul determines that is not true and denies the passport, whether that is a denial of a right. If the Circuit says it is a denial of a right then we will just proceed with the testimony here and ascertain what the facts are.

Mr. Atkins: Your Honor, might I address the court on one particular matter?

The Court: All right.

Mr. Atkins: At the beginning of this hearing I stated it was the government's position, and your Honor and I both agreed, it is irrelevant whether the application was made in good faith or not. However, I do believe it might be important for your Honor to make a ruling as to the showing of good faith in order that if a higher court, the Circuit, was [55] interested in it, they would be also very interested in knowing what your appraisal of the testimony of the witnesses was. From the testimony adduced here, I believe it has been shown conclusively that Chew Wing Luk knew far in advance of his making the application for a passport that his true mother, the person who was his natural mother, was Chew Fong Shew, the lady sitting in this court room now, and when he made the application he consciously misstated that. I would suggest or request that perhaps your Honor might make rulings on the issue of good faith and knowledge of his true maternity at the time he made the application.

The Court: No. You started this case on the theory it was immaterial whether there was or was not good faith.

Mr. Atkins: I still maintain that.

The Court: I agree with you.

Mr. Broffman: Just to correct the record, Mr. Atkins indicated before that it was the Attorney General who caused the certificate of identity to be issued so that Chew Wing Luk could come into the United States. Under the statute, it is the Secretary of State that has that authority and I have here a photostat of a letter from the Department of State, Washington, dated October 8, 1951, directed to the attorneys in San Francisco advising that the American Consulate General at Hong Kong has been instructed to issue a certificate [56] of identity to Chew Wing Luk so that he might proceed to the United States in order to testify in his own behalf. That is signed by R. F. Shipley, Chief, Passport Division.

Mr. Atkins: Your Honor, I may have misstated it as Attorney General for Secretary of State. Come to think of it, I am not absolutely certain and it may well be the Secretary of State. The point I was trying to make was that it wasn't the Consul at Hong Kong.

The Court: I want it distinctly understood that I am not deciding at this time and nothing I have said is to be taken as indicating that I have decided that the plaintiff is or is not the son of the alleged mother. The only thing I am deciding is that I don't

have the right to decide this matter because he has not been denied a right.

Mr. Broffman: The only point I am trying to bring to your Honor's attention clearly is that we don't have to believe the American Consul, and the State Department also apparently took issue when they issued the certificate of identity to him.

The Court: Do you want that letter in as part of the record? If you do, I will allow it to go in.

Mr. Broffman: I do not have the original with me. I have a photostat.

The Court: Maybe Mr. Atkins would not object.

Mr. Atkins: I will stipulate. [57]

The Court: Let's put it in the record. I don't know whether it has a thing to do with this case or not. Although I may not agree with you, I do agree with your right that you have the right to appeal and I will do everything I can to protect your record on appeal.

The Clerk: Plaintiff's Exhibit 2 in evidence.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 2.)

The Court: Mr. Atkins, will you prepare the findings in accordance with the ruling?

Mr. Atkins: Yes, your Honor.

The Court: All right. [58]

[Endorsed]: Filed August 7, 1958.

[Endorsed]: No. 16171. United States Court of Appeals for the Ninth Circuit. Chew Wing Luk, Appellant, vs. John Foster Dulles, as Secretary of State, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: August 30, 1958.

Docketed: September 4, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16171

CHEW WING LUK, Appellant,
vs.

JOHN FOSTER DULLES, as Secretary of State,
Appellee.

STATEMENT OF POINTS
BY APPELLANT

The sole question at issue is whether the Court has jurisdiction to decide the citizenship of appellant.

Appellant alleges that the Court has jurisdiction to decide the question of citizenship where the appellant was denied the right of a national of the

United States under Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 USC 903) when he presented to the American Consul, in good faith, an application for a United States passport and such passport was denied but appellant was permitted to proceed to the United States for the sole purpose of obtaining a judicial declaration of his citizenship.

Appellant alleges that the Court has continuing jurisdiction to decide appellant's claim to citizenship even though appellant found newly discovered evidence after he came to the United States and after his original complaint was filed, and presented this newly discovered evidence in an amended complaint to the Court, even though the American Consul was not furnished, and could not have been furnished, the newly discovered evidence, by the appellant, but such newly discovered evidence establishes appellant's citizenship.

SIDNEY BROFFMAN and
SIDNEY M. KAPLAN,
/s/ By SIDNEY BROFFMAN.

Proof of Service by Mail Attached.

[Endorsed]: Filed September 13, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF RECORD TO BE PRINTED

Now comes the appellee and herewith designates the following to be printed as its Designation of Record on appeal:

1. The entire Reporter's Transcript of Proceedings held at Los Angeles, California, on Friday, February 21, 1958, pp. 1-59.
2. All evidence introduced at the aforesaid proceedings as Exhibits in evidence.

A stipulation will be forthcoming between counsel for appellant and appellee stipulating that the said Exhibits may be considered in their original form and need not be printed.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

HENRY P. JOHNSON,
Assistant U. S. Attorney,

/s/ HENRY P. JOHNSON,
Attorneys for Appellee.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 23, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION THAT EXHIBITS BE CONSIDERED IN THEIR ORIGINAL FORM AND NEED NOT BE PRINTED

It Is Hereby Stipulated, by and between the parties to this appeal, through their respective attorneys of record, that all exhibits received in evidence at the hearing held February 21, 1958, in the instant case be considered by this Honorable Court in their original form and need not be printed.

Dated: September 22, 1958.

SIDNEY BROFFMAN and
SIDNEY M. KAPLAN,

/s/ By SIDNEY BROFFMAN,
Attorneys for Appellant.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

HENRY P. JOHNSON,
Assistant U. S. Attorney,

/s/ HENRY P. JOHNSON,
Attorneys for Appellee.

[Endorsed]: Filed September 26, 1958. Paul P.
O'Brien, Clerk.